STATUTORY INSTRUMENTS

2018 No. 187

UNITED NATIONS

The United Nations (International Residual Mechanism for Criminal Tribunals) Order 2018

Made - - - -	*8th February 2018*
Laid before Parliament	*15th February 2018*
Laid before the Scottish Parliament - - - -	*15th February 2018*
Coming into force - -	*8th March 2018*

At the Court at Buckingham Palace, the 8th day of February 2018

Present,

The Queen's Most Excellent Majesty in Council

Under article 41 of the Charter of the United Nations the Security Council of the United Nations has, by resolution 1966 adopted on 22nd December 2010, called upon Her Majesty's Government in the United Kingdom to apply certain measures to give effect to decisions of that Council in relation to the International Residual Mechanism for Criminal Tribunals;

Her Majesty, in exercise of the powers conferred upon Her by section 1 of the United Nations Act 1946(**1**) and section 77(4) of the International Criminal Court Act 2001(**2**), is pleased, by and with the advice of Her Privy Council, to order as follows:

(**1**) 1946 c. 45. Section 1(2) was amended by: the Statute Law (Repeals) Act 1995 (c.44), Schedule 1, para 2; the Burma Independence Act 1947 (c.3), Schedule 2, Part 1; and the Zimbabwe Act 1979 (c.60), section 6(3) and Schedule 3. Section 1(4) was amended by the Scotland Act 1998, Schedule 8, para 6. There have been other amendments, but none are relevant to this Order.

(**2**) 2001 c. 17. Part II, as amended by SI 2014/2706, article 2, Schedule, para.1. There are other amendments, but none relevant to this Order.

PART 1

INTRODUCTION

Citation, commencement and extent

1.—(1) This Order may be cited as the United Nations (International Residual Mechanism for Criminal Tribunals) Order 2018 and comes into force on 8th March 2018.

(2) This Order extends to the United Kingdom.

(3) So far as this Order relates to proceedings in a service court the relevant provisions extend to any place at which those proceedings are held.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—

"access order" means an order made under article 18(5)(b);

"appropriate judicial officer" means—

(a) the Senior District Judge (Chief Magistrate);

(b) a District Judge (Magistrates' Courts) designated by the Senior District Judge (Chief Magistrate) for the purposes of this Order; or

(c) the Sheriff of Lothian and Borders;

"competent court" means a court consisting of an appropriate judicial officer;

"delivery order" means an order for delivery up made under article 6, 9(5) or 10(6);

"endorsed warrant" means a warrant of arrest endorsed under article 4(3);

"the Mechanism" means—

(a) the International Residual Mechanism for Criminal Tribunals established by resolution 1966 adopted by the United Nations Security Council on 22 December 2010(**3**);

(b) any of the organs of the Mechanism referred to in article 4 of the Statute;

"Mechanism crime" means a crime in respect of which the Mechanism has competence under article 1 of the Statute;

"national court" means a court in the United Kingdom or a service court;

"the President of the Mechanism" means the President appointed under the Statute by the Secretary-General of the United Nations;

"prisoner" means—

(a) a person serving a sentence in a prison or other institution to which the Prison Act 1952(**4**), the Prisons (Scotland) Act 1989(**5**) or the Prison Act (Northern Ireland) 1953(**6**) applies; or

(b) a person serving a sentence of detention or imprisonment imposed by a service court;

"production order" means an order made under article 18(5)(a);

"the Prosecutor" means the Prosecutor responsible under the Statute for the investigation and prosecution of persons in accordance with the Statute and the Rules;

(**3**) S/RES/1966 (2010).
(**4**) 1952 c. 52. There are amendments, but none relevant to this Order.
(**5**) 1989 c. 45, as amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9), section 22. There have been other amendments, but none are relevant.
(**6**) 1953 c. 18 (N.I.), as amended by S.I. 2010/976, articles 1(2) and 6(1).

"the Registrar" means the Registrar appointed under the Statute by the Secretary-General of the United Nations;

"the Rules" means the Rules of Procedure and Evidence of the Mechanism(**7**) adopted under article 13 of the Statute;

"service court" means a court martial constituted under the Armed Forces Act 2006(**8**), whether the court is held within the United Kingdom or elsewhere;

"sheriff" includes "summary sheriff";

"the Statute" means the Statute of the Mechanism annexed to resolution 1966 adopted by the United Nations Security Council on 22 December 2010, the text of which is set out in the Schedule to this Order;

"transfer order" means an order issued by the Mechanism under rule 38 of the Rules for the transfer of a person to the Mechanism; and

"transfer warrant" means a warrant issued under article 10(2) or (9).

(2) A reference in this Order to a part of the United Kingdom is a reference to England and Wales, to Scotland or to Northern Ireland.

(3) A reference in this Order to arrangements made by the Secretary of State with the Registrar or with another state is a reference to arrangements of a general nature or to arrangements relating to a particular case or group of cases.

Purpose of this Order

3.—(1) This Order has effect for the purpose of enabling the United Kingdom to co-operate with the Mechanism in the investigation and prosecution of persons accused of committing Mechanism crimes and the punishment of persons convicted of such crimes.

(2) Without prejudice to the generality of paragraph (1), this Order has effect—

(a) to provide for the arrest and delivery to the Mechanism of persons accused or convicted of a Mechanism crime and for the arrest in cases of urgency of persons suspected of having committed a Mechanism crime;

(b) to secure the attendance before the Mechanism of persons as witnesses or to assist in investigations;

(c) to give effect to requests by the Mechanism for the discontinuance of certain proceedings in courts constituted under any enactment or rule of law applying in England and Wales, Scotland and Northern Ireland;

(d) to provide the Mechanism with other forms of assistance in the investigation and prosecution of Mechanism crimes;

(e) to enforce orders of the Mechanism for the preservation or restitution of property and to give effect to requests to determine the ownership of property; and

(f) to make provision for the immunities and privileges of the Mechanism and persons connected with it.

(3) Nothing in this Order prevents the provision of assistance to the Mechanism otherwise than under this Order.

(**7**) http://www.unmict.org/sites/default/files/documents/120608_rules_en.pdf.
(**8**) 2006 c. 52. There are amendments, but none are relevant to this Order.

PART 2

ARREST AND DELIVERY OF PERSONS TO THE MECHANISM

Endorsement of warrants of arrest

4.—(1) Where the Secretary of State receives from the Mechanism a warrant of arrest issued by the Mechanism (including such a warrant issued or received before the commencement of this Order), the Secretary of State must transmit the warrant to an appropriate judicial officer.

(2) If the Secretary of State considers that the warrant of arrest should be endorsed by an appropriate judicial officer in Scotland, he must transmit the warrant and the documents accompanying it to the Lord Advocate who must transmit them to an appropriate judicial officer.

(3) Subject to paragraph (4), the appropriate judicial officer must endorse the warrant for execution in any part of the United Kingdom.

(4) The appropriate judicial officer must not endorse a warrant for the arrest of a person ("P") convicted by the Mechanism unless the purpose of the arrest is to enable P—

(a) to be brought before the Mechanism; or

(b) to be taken to a place where P is to undergo imprisonment under a sentence of the Mechanism.

Provisional warrants of arrest

5.—(1) Where the Secretary of State—

(a) receives a request from the Mechanism for the arrest of a person ("P") who is suspected or accused of having committed a Mechanism crime; and

(b) the request is not accompanied by a warrant but is made on the grounds of urgency,

the Secretary of State must transmit the request to a constable and direct the constable to apply for a warrant for the arrest of P.

(2) An appropriate judicial officer may issue a warrant ("a provisional warrant") for the arrest of P on an application by a constable stating on oath that the constable has reason to believe—

(a) that a request has been made on grounds of urgency by the Mechanism for the arrest of P who is suspected or accused of having committed a Mechanism crime;

(b) that P is in or on the way to the United Kingdom; and

(c) that the purpose of the arrest is to enable P to be brought before the Mechanism.

(3) If a provisional warrant is issued, the appropriate judicial officer must notify the Secretary of State.

(4) In the application of paragraphs (1), (2) and (3) to Scotland, the following modifications have effect—

(a) the request by the Mechanism must be transmitted to a procurator fiscal who shall apply for a warrant;

(b) an application for a warrant must be made by the procurator fiscal and must be supported by information as respects the matters specified in paragraph (2).

(5) A person ("Q") arrested under a provisional warrant must be brought before a competent court as soon as practicable, and—

(a) if an endorsed warrant in respect of Q is produced to the court, the court must proceed as if P had been arrested under that warrant, and article 6 applies accordingly;

(b) if a transfer order is produced to the court, the court must deal with Q in accordance with article 6(4) to (9); and

(c) if no such warrant or order is produced, the court may, pending the production of such a warrant or order, remand Q for not more than 18 days at a time, provided that the total period of remands does not exceed 40 days in all.

(6) If at any time an endorsed warrant relating to a person ("R") remanded under article 5(c) is produced to the court which remanded R, the court must determine the period of remand and R must thereafter be treated as if arrested at that time under the endorsed warrant.

(7) If an endorsed warrant or transfer order relating to a person ("S") remanded under article 5(c) is not produced to the court which remanded S within the period of S's remand (including any extension of that period), S must be discharged by the court.

Proceedings before competent court after arrest

6.—(1) As soon as practicable after a person ("P") is arrested under an endorsed warrant, P must be brought before a competent court, and (subject to paragraph (6)) the court must make the appropriate order and remand P until it is executed.

(2) Where the purpose of the arrest is to enable P to be brought before the Mechanism, the appropriate order is that P be delivered up into the custody of the Mechanism in accordance with arrangements made by the Secretary of State with the Registrar.

(3) Where the purpose of the arrest is to enable P to be taken to a place to undergo trial in accordance with a referral of the Mechanism under article 6 of the Statute, or imprisonment under a sentence of the Mechanism, the appropriate order is that P be delivered up into the custody of the state in which that place is situated, in accordance with arrangements made by the Secretary of State with that state.

(4) Where, in the case of a person ("Q") arrested under a provisional warrant, a transfer order is produced to the court, (subject to paragraph (6)) the court must—

(a) order that Q be delivered up into the custody of the Mechanism in accordance with arrangements made by the Secretary of State with the Registrar; and

(b) remand Q until it is executed.

(5) If it is shown to the satisfaction of the competent court that other criminal proceedings (not being proceedings under the Extradition Act 2003(**9**)) have been instituted in respect of the arrested person in a national court and that those proceedings—

(a) have not been finally determined so far as they relate to conduct which would not constitute a Mechanism crime; or

(b) have not been discontinued (whether in pursuance of this Order or otherwise) so far as they relate to conduct which would constitute a Mechanism crime,

the proceedings under this article must be adjourned and the competent court may remand the arrested person until the other criminal proceedings have been finally determined or have been discontinued.

(6) An order must not be made under paragraph (1) or (4) if it is shown to the satisfaction of the competent court—

(**9**) 2003 c. 41. Section 21 as amended by the Anti-social Behaviour, Crime and Policing Act 2014 (c.12), Schedule 11(4), paras. 105(2) and (3), and both section 21 and section 92, as amended by the Police and Justice Act 2006 (c.48), Schedule 13(1), para. 16(2); the Constitutional Reform Act 2005 (c. 4), section 40(4) and Schedule 9, paragraph 81, the Police and Justice Act 2006 (c. 48), section 42 and Schedule 13, paragraphs 1-3, 5, 8, 13-19, 25-26, the Policing and Crime Act 2009 (c.26), sections 70, 71, 73-76, 78, the Crime and Courts Act 2013 (c. 22), section 50 and Schedule 20, paragraphs 4-6, 10-13, 15, the Anti-Social Behaviour, Crime and Policing Act 2014 (c. 12), sections 160-164, 167, 169, and S.I. 2015/992, article 3(10)-(15). There are other amendments, but none relevant to this Order